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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Solbourne Computer, Inc.

**File:** B-237759

**Date:** March 23, 1990

Paul Lippe, for the protester.  
Garrett L. Thomas, Esq., Sun Microsystems Federal, Inc., an interested party.  
James F. Trickett, Office of the Secretary, Department of Health & Human Services, for the agency.  
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency which publishes a Commerce Business Daily notice of intent to purchase computer equipment from a non-mandatory Federal Supply Schedule, but fails to include sufficient information to provide prospective offerors with an opportunity to respond to the notice in a meaningful way, violates applicable provisions of the Federal Information Resources Management Regulation.

### DECISION

Solbourne Computer, Inc., protests the decision of the National Library of Medicine to order a computer system from Sun Microsystems Federal, Inc., under a non-mandatory General Services Administration (GSA), automatic data processing equipment (ADPE) schedule contract (No. GS00K88-AGS5897, option year 1). Solbourne contends that the Library improperly deemed technically unacceptable its proposal of an "equal" system which it submitted in response to NLM Synopsis No. 90-002/RMC published in the Commerce Business Daily (CBD).

We sustain the protest.

According to the CBD synopsis, the Library intended to order a brand name computer system from Sun or equivalent products, including a SPARC server 390 model Data Center server with 56 megabyte (MB) memory, 2x1 gigabyte (GB) IPI Disk, related hardware, software, right-to-use license, and

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operating manuals. The synopsis also provided that the system must meet certain performance specifications including that "disks must be capable of sustained transfer rates of at least 3 MB/second and average seek times of less than 20 ms [microseconds]." Potential offerors were advised that they must "provide all the above listed items and meet all specifications listed."

Solbourne, Sun, and another concern (whose subsequent elimination has not been protested) provided written responses to the synopsis. The Library evaluators found that Sun met all specifications, but could not tell from Solbourne's submittal which of its proposed family of systems it would offer. Upon the recommendation of the evaluators, Solbourne was requested to submit a more detailed response which could be reasonably evaluated. In a revised response, although Solbourne stated that it met all the requirements of the CBD synopsis including "2x1 GB IPI Disks, with expandability to well over 4 GB at 3 MB/second sustained rate," it proposed "1.0 GB SMD Disks" and an SMD disk controller.

The evaluators found Solbourne's submittal unacceptable in two areas: disk controller type and system expansion capacity. With regard to the controller, the evaluators noted that Solbourne's SMD controller was approximately equivalent to Sun's "mid-range" SPARC server 370 model, not the "high-end" SPARC server 390 model specified. In particular, the IPI controller, which is part of the specified SPARC server 390 model, has a maximum transfer rate of 6 MB/second compared with a 3 MB/second maximum rate on an SMD controller. In addition, the evaluators noted that the IPI controller has a number of features not found in the SMD controller, including parallel data transfer, read-ahead buffer, burst transfer rates up to 30 MB/second, ability to initiate multiple "seeks" for information, and immediate read/write capability once the head settles. With regard to the number of expansion slots for connecting peripheral equipment, the evaluators noted that Solbourne's system provided only five extra slots, while the specified Sun system provided ten extra slots.

The Library notified Solbourne that its submittal was considered unacceptable and provided it with a debriefing. Solbourne then filed its protest with our Office.

Solbourne contends that the specifications set forth in the synopsis did not identify a requirement for an IPI controller or for a particular number of expansion slots and therefore Solbourne was not required to meet them. Had the Library identified IPI as a salient characteristic,

Solbourne maintains, it would have offered IPI technology. The Library concedes that notice of its requirement for a certain number of slots was omitted from the synopsis, but argues that the requirement for an IPI controller was included in the list of items it intended to purchase from Sun.

Agencies are required to obtain full and open competition in the procurement of goods and services through the use of competitive procedures. 41 U.S.C. § 253(a) (1982). Agencies may place an order against a GSA non-mandatory ADPE schedule contract when the ordering agency follows procedures specified in the Federal Information Resources Management Regulation (FIRMR) and where the order provides the lowest overall cost alternative to meet the government's needs. 41 U.S.C. § 259(b)(3); FIRMR, 41 C.F.R. § 201-32.206 (1988). The procedures specified in the FIRMR require that agencies publicize the planned award in a manner which provides offerors the opportunity to respond to the synopsis in a meaningful way and so as to enable the agency to form a reasoned determination of the lowest overall cost alternative. Rocky Mountain Trading Co. - Sys. Div., GSBICA No. 10039-P, 89-3 BCA ¶ 22,086 (July 10, 1989).

Where, as here, the purchase price will exceed \$50,000, an agency must publish a notice of its intent to place an order against a non-mandatory schedule contract in the CBD at least 15 days before placing the order. According to the regulation:

"The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses will be fully considered by the agency:

. . . . .

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific make and model of any equipment to be ordered or maintained;

(B) The name, functional description, and operating environment of any software packages to be ordered;

(C) The quantities, dates required, period of performance, and system/item life;

(D) The support requirement (e.g., hours of maintenance coverage or response times) for the ordered items;

(E) Any restrictive (e.g., 'bundled,' 'only new,' or 'all or none') requirements that have been justified . . . ."

41 C.F.R. § 201-32.206(f) (1988).

The Library argues that simply listing IPI disks among the brand name items it intended to order was sufficient to notify offerors of the "design characteristic" of an IPI controller. In this regard, Sun states that IPI disks can only be operated by an IPI controller. We are not persuaded that the mere listing of the type disk to be ordered and the words "or equivalent" are sufficient to meet the requirements of the FIRM for an "accurate description of the equipment" and "any restrictive . . . requirements." See FIRM, 41 C.F.R. § 201-32.206(f). Here, while the agency has identified numerous differences between the IPI controller of the brand name system and the proposed SMD controller, none is listed in the synopsis as a salient or necessary characteristic. The sole relevant controller characteristic listed is the 3 MB/second sustained data transfer rate, which is one-half the rate an IPI controller is capable of sustaining. We think that, in light of such a limited listing, an offeror could reasonably conclude that the Library was not looking for the specific features of an IPI controller. Thus, to the extent an IPI controller with its different performance capabilities represents the agency's minimum requirements, the synopsis failed to state those requirements adequately. See Rocky Mountain Trading Co. - Sys. Div., 80-3 BCA ¶ 22,086, supra (agency listing of brand name items, without listing salient characteristics, does not satisfy FIRM requirements for CBD synopsis).

The government is obligated to inform offerors of the salient characteristics of a brand name product, i.e., those characteristics essential to the government. This is the rule generally applicable to federal agency procurements, including procurements subject to the FIRM. FIRM, 41 C.F.R. §§ 201-1.601, 201-1.602; Federal Acquisition Regulation (FAR) §§ 10.001, 10.004(b). In view of this obligation, offerors of "equal" products need not meet unstated features of the brand name item, but only the

salient characteristics expressed in the solicitation or, in this case, the CBD synopsis. See Automated Marketing Sys., Inc., B-230014, Mar. 18, 1988, 88-1 CPD ¶ 289. Further, absent any listed salient characteristics regarding a particular technology, "equal" offerors need only propose functionally equivalent equipment. See Eastman Kodak Co., B-228306, Dec. 30 1987, 87-2 CPD ¶ 643. Since Solbourne's stated ability to meet the disk capacity and specified data transfer rate is not disputed by the Library, we find that Solbourne's system was functionally equivalent to the system specified in the synopsis and the Library could not properly reject it under the synopsis used here.

Accordingly, we sustain the protest. We recommend that the agency determine its minimum requirements concerning the equipment to be procured and clearly communicate those requirements to potential offerors, in accordance with the FAR and the FIRM either in a new CBD synopsis or a competitive solicitation. We find that Solbourne is entitled to the reasonable costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1989).

The protest is sustained.



Acting Comptroller General  
of the United States